

Jonathan D McCue
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08CV428 - JAH(NLS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
880 FRONT STREET, SUITE 4290
SAN DIEGO, CALIFORNIA 92101-8900

OFFICIAL BUSINESS

JAH

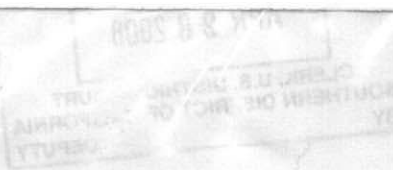


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04/16/2008

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US POSTAGE

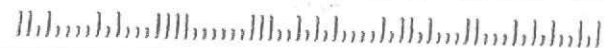


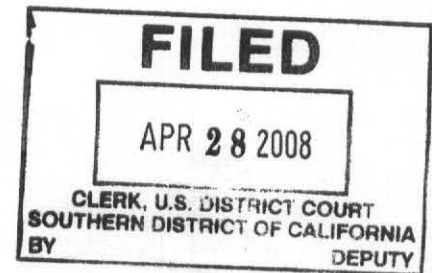
92101@9929

NIXIE 921 5E 1 72 04/18/08

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 92101@992965 *1377-02489-10-25





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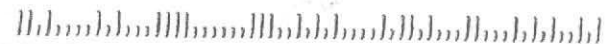
04/16/2008

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US POSTAGE

NIXIE 921 5E 1 72 04/18/08

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BC: 92101092963 *1377-02489-18-25



92101092963

Motions

3:08-cv-00428-JAH-NLS Rinaldi v. Porsche Cars North America, Inc et al

U.S. District Court**Southern District of California****Notice of Electronic Filing**

The following transaction was entered on 4/16/2008 at 10:10 AM PDT and filed on 4/11/2008

Case Name: Rinaldi v. Porsche Cars North America, Inc et al

Case Number: 3:08-cv-428

Filer: John Rinaldi

Document Number: 7

Docket Text:

MOTION to Remand by John Rinaldi. (Attachments: # (1) Memo of Points and Authorities)(jpp)

3:08-cv-428 Notice has been electronically mailed to:

Douglas Dawson Guy dguy@gogglaw.com

Nadine M. Sayegh nsayegh@gogglaw.com, jsmith@gogglaw.com

3:08-cv-428 Notice has been delivered by other means to:

Jonathan D McCue
McCue and McCue
600 West Broadway
Suite 2880
San Diego, CA 92101

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1106146653 [Date=4/16/2008] [FileNumber=2539731-0]
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579fbb17cf993276421e93ed3f904203038eac6de05d9c8b20f7865e62fd4]]

Document description:Memo of Points and Authorities

Original filename:n/a

1 Lemon Law Advocates
2 Jonathan D. McCue (128896)
3 Stephen P. Polapink (177489)
4 31938 Highway 79 South, Suite A-328
5 Temecula, CA 92592
6 (T) 951-553-4986
7 (F) 951-302-5850

8 Attorneys for Plaintiff John Rinaldi

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 John Rinaldi, an individual,

12 Plaintiff,

13 v.

14 Porsche Cars North America, Inc.,
15 a corporation; and DOES 1 through
16 5, inclusive,

17 Defendants

CASE NO. 08CVU428 JAH NLS

Notice of Motion and Motion for Remand

Hearing Date: May 27, 2008
Hearing Time: 2:30 p.m.
Action Filed: February 5, 2008

18 PLEASE TAKE NOTICE THAT on May 27, 2008 at 2:30 p.m., or as soon
19 thereafter as the Court may hear, in Courtroom 11, in front of the Honorable John A.
20 Houston, Plaintiff John Rinaldi will, and hereby does, request that this Court grant
21 Plaintiff's Motion for Remand.

22 This motion for remand is based upon this Notice of Motion and Motion, the
23 Points and Authorities filed in support thereof, the [Proposed] Order, and the file and
24

25 *Notice of Motion and Motion for Remand*

FILED
08 APR 11 PM 3:39
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]*
DEPUTY

"VIA FAX"

1 record of this matter.

2
3 Respectfully submitted.

4 DATE: April 11, 2008

5 LEMON LAW ADVOCATES
Jonathan D. McCue (128896)
Stephen P. Polapink (177489)

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8 _____
Jonathan D. McCue
Stephen P. Polapink

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PROOF OF SERVICE**"VIA FAX"**

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 31938 Highway 79 South, Suite A-328, Temecula, CA 92592.

On April 9, 2008, I served the foregoing documents described as:

Notice of Motion and Motion for Remand; Memorandum of Points and Authorities in Support of Motion for Remand; and [Proposed] Order.

By Mail, I placed true and correct copies of the foregoing documents in sealed envelopes addressed as stated on the attached service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service on that same day and in the ordinary course of business.

Executed this 11th day of April 2008 at Temecula, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Stephen P. Polapink

SERVICE LIST

A. CASE

**John Rinaldi, an individual v. Porsche Cars North America, Inc., a corporation, and
DOES 1 through 5, inclusive.**

United States District Court Southern District of California
Case number 08CVU0428 JAH NLS

B. DEFENSE COUNSEL

Attorneys for Defendant Porsche Cars North America, Inc.

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Gates, O'Doherty, Gonter and Guy, LLP
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San Diego, California 92128
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Lemon Law Advocates
Jonathan D. McCue (128896)
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31938 Highway 79 South, Suite A-328
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(T) 951-553-4986
(F) 951-302-5850

Attorneys for Plaintiff John Rinaldi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

John Rinaldi, an individual,

Plaintiff,

v.

Porsche Cars North America, Inc.,
a corporation; and DOES 1 through
5, inclusive,

Defendants

CASE NO. 08CVU428 JAH NLS

Points and Authorities in Support of
Plaintiff's Motion for Remand

Hearing Date: May 27, 2008
Hearing Time: 2:30 p.m.
Action Filed: February 5, 2008

Plaintiff John Rinaldi ("plaintiff") respectfully submits these Points and
Authorities in support of his Motion to remand this case to the Superior Court of the
State of California, County of San Diego, North County Division (before the Honorable
Robert P. Dahlquist) because the state court claim (for restitution pursuant to California's
Song-Beverly Warranty Act, Civil Code §§ 1790 et seq.) predominates.

Points & Authorities in Support of Plaintiff's Motion for Remand

FILED

08 APR 11 PM 3:39

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *g*

DEPUTY

"VIA FAX"

SUMMARY

On, or about, April 26, 2007, Plaintiff purchased a 2003 Porsche from Lexus Kearny Mesa.

The vehicle was purchased within, and the nonconformities began during, the manufacturer's, defendant Porsche Cars North America, Inc.'s, factory warranty period.

Soon after purchase, Plaintiff experienced continuing nonconformities with the vehicle, including, but not limited to, the following: difficulty getting into second gear; popping out of gear; defective first and second gear synchronizer; defective dog teeth; static noise from radio; abnormal clunking/clacking noise from rear of vehicle; intermediate shaft bearing cage failure; intermediate shaft bearing missing bearings; defective flange bearing; vehicle not starting; engine clunking when not starting; engine consuming too much oil; vehicle not starting; and a broken trip switch.

Despite confirmation of the nonconformities and repeated repair attempts, defendant has been unable to correct the nonconformities. These nonconformities substantially impair the use, value and/or safety of the vehicle. Accordingly, under California law, Plaintiff is entitled to the restitution sought in his state court complaint.

Plaintiff and his attorneys attempted, in good faith, to resolve this matter directly with defendant Porsche Cars North America, Inc. until Porsche Cars North America, Inc., without explanation, stopped responding to such efforts. In fact, plaintiff had been offered \$3,000.00 to settle this claim before seeking representation. Defendant Porsche Cars North America, Inc. never reiterated this offer, nor explained its withdrawal.

LEGAL AUTHORITY

The State Court claim for relief pursuant to California's Song-Beverly Consumer Warranty Act, Civil Code §§1790 et seq., predominates over plaintiff's federal claim.

Points & Authorities in Support of Plaintiff's Motion for Remand

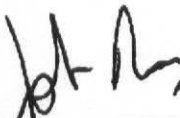
1 Federal law recognizes that state court claims can, and do, predominate over
 2 certain federal claims; and, as such, the federal court may decline to exercise supplemental
 3 jurisdiction. 23 U.S.C. §1367(c). Indeed, here, plaintiff's prayer for relief seeks the same
 4 remedies provided for under California's Song-Beverly Consumer Warranty Act. And,
 5 there is no exclusive federal prayer made.¹

6 CONCLUSION

7 Plaintiff's action is a straightforward California lemon law claim filed after
 8 defendant's refusal to entertain any reasonable pre-litigation settlement negotiations, and
 9 after withdrawing its initial settlement offer. For these reasons, the complaint should be
 10 remanded to state court.

11 DATE: April 11, 2008

12 LEMON LAW ADVOCATES
 13 Jonathan D. McCue (128896)
 14 Stephen P. Polapink (177489)

15 

16 Jonathan D. McCue
 17 Stephen P. Polapink

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 24 ¹ If necessary, plaintiff is willing voluntarily to dismiss his federal claim in order to accommodate
 25 everyone's interests.

Notices

3:08-cv-00428-JAH-NLS Rinaldi v. Porsche Cars North America, Inc et al

U.S. District Court**Southern District of California****Notice of Electronic Filing**

The following transaction was entered on 4/16/2008 at 10:13 AM PDT and filed on 4/11/2008

Case Name: Rinaldi v. Porsche Cars North America, Inc et al

Case Number: 3:08-cv-428

Filer: John Rinaldi

Document Number: 8

Docket Text:

**NOTICE of Non-Compliance with Local Rule 5.4(a) Mandatory Electronic Filing re [7]
MOTION to Remand (jpp)**

3:08-cv-428 Notice has been electronically mailed to:

Douglas Dawson Guy dguy@gogglaw.com

Nadine M. Sayegh nsayegh@gogglaw.com, jsmith@gogglaw.com

3:08-cv-428 Notice has been delivered by other means to:

Jonathan D McCue
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600 West Broadway
Suite 2880
San Diego, CA 92101

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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FILED
08 APR 11 PM 3:36
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

1
2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5

6 Rinaldi)

7 Plaintiff)

8 vs)

9 Porshce Cars North America, et al.)
10 Defendant)

Case Number:08cv428

**NOTICE OF NONCOMPLIANCE WITH
LOCAL RULE 5.4(a) MANDATORY
ELECTRONIC FILING**

11 Document Submitted:Notice of Motion

12 Filed by Attorney:John McCue

13 The document(s) listed above were not submitted electronically and therefore do not comply with
14 Local Rule 5.4(a).

15 L.R. 5.4(a) - Except as proscribed by local rule, order or other procedure, the court has designated all
16 cases to be assigned to the Electronic Filing System. Unless otherwise expressly provided in the
17 Court's Electronic Case Filing Administrative Policies and Procedures Manual, the Court's Local
18 Rules, or in the exceptional circumstances preventing a registered user from filing electronically, as
19 of November 1, 2006 all petitions, motions, memoranda of law, or other pleadings and documents
required to be filed with the court by a registered user in connection with a case assigned to the
Electronic Filing System shall be electronically filed.

20 A copy of this notice has been provided to counsel of record for this party.

21 ****Counsel must register for CM/ECF on the court's web site, www.casd.uscourts.gov, within 5**
22 **business days of receipt of this notice.**

23 Please take notice, further documents submitted that do not comply with this rule will be submitted
24 to the Court on a discrepancy order.

25 Date:4/11/08

W. Samuel Hamrick, Clerk of Court

By,/s/JP Deputy Clerk
26
27
28